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Approval of the New Jersey Coastal Zone Management Program Bay and Ocean Shore Segment

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Findings of Robert W. Knecht

Assistant Administrator

for

Coastal Zone Management

National Oceanic and Atmospheric Administration

Approval of the

New Jersey

Coastal Zone Management Program

Bay and Ocean Shore Segment

I. Introduction

As Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, (NOAA), I have reviewed the record of the development of the New Jersey Coastal Management Program Bay and Ocean Shore Segment (the Program) including the Coastal Management Strategy for New Jersey, dated September 1977, the combined Program/Draft Environmental Impact Statement (DEIS) submitted to the Environmental Protection Agency on April 28, 1978, and the Program/Final Environmental Impact Statement (FEIS) issued August 24, 1978, and all comments thereon.

Based on this review, I have concluded that the Program meets all the requirements of the Coastal Zone Management Act of 1972, as amended, (CZMA) and its implementing regulations and should be approved as set forth below.

II. Summary of the New Jersey Program Segment

New Jersey has chosen to submit a segment of the State program pursuant to the provisions of Section 306(h) of the CZMA which states that:

> At the discretion of the State and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: Provided,

> that the State adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

The Segment is a State developed program to manage significant land and water areas within:

> the inland boundary of the coastal area is defined as the jurisdiction of the Coastal Area Facility Review Act, or the Upper Wetlands Boundary of the coastal wetlands located landward of the CAFRA boundary; the seaward boundary extends to the limits of the U.S. territorial waters.

The program is based on a series of resource management laws passed during the early 1970's (outlined in Section V) that gave the State direct control over land and water uses of statewide significance. These laws are administered by the Department of Environmental Protection. Chief among these laws is the Coastal Area Facility Review Act (CAFRA), which establishes a comprehensive permit review for all major facilities proposed for location within its jurisdiction. Also included is the recent New Jersey Department of Energy Act which provides that the siting of energy facility decisions will be jointly made between the Department of Energy and the Department of Environmental Protection. The land and water use decisions which are only of local significance will continue to be managed by the local governments.

III. History of the New Jersey Segment

The New Jersey legislature passed the Coastal Area Facility Review Act in 1973. Prior to this Act the legislature had passed the Wetlands Act in 1970, The Shore Protection and Waterways Maintenance Act and Acts governing the sale, leasing and management of State-held riparian lands to which the State has held title since colonial days. The preparation of the State coastal management program began in 1974 upon receipt of Federal funds pursuant to the CZMA. Concurrently, the State began to prepare a coastal program for the coastal area from Raritan Bay to the Delaware Memorial Bridge as required by passage of the CAFRA Statute by the State legislature in 1973. In September of 1977, the State distributed a Coastal Management Strategy For New Jersey - CAFRA Area (as mandated by the CAFRA Act). This strategy document became the basis for the Program/DEIS released May 5, 1978. As part of the DEIS process, the State proposed Chapter 4 of the Program as administrative rules of the Department of Environmental Protection. These proposed rules were revised and adopted, effective September 28, 1978. Over 1100 comments were received on the Program/DEIS and summarized in the Program/FEIS. On August 28, 1978, the Program/FEIS was circulated.

IV. The Federal Coastal Zone Management Program

The CZMA was passed in recognition of the importance of the coastal zone of the United States and the potentially adverse effects of

intense pressures upon this national resource. The Act authorizes a program of financial assistance to encourage the States to better manage their coasts and is administered by the Secretary of Commerce, who in turn, delegated this responsibility to NOAA's Office of Coastal Zone Management.

The CZMA states at the outset that "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." (Section 302(a)) The Congressional findings describe how competition for utilization of coastal resources, brought on by the increased demands of population growth and economic development, has led to degradation of the coastal environment, including the "loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion." (Section 302(c)) "The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states in cooperation with Federal and local governments and other vitally affected interests in developing land and water use programs...for dealing with coastal land and water use decisions of more than local significance." (Section 302(h))

These broadly stated goals of the CZMA recognize that each individual State should develop a program most appropriate to its unique needs

and situation. Thus, the State level of government has prime responsibility for achieving effective management of the coastal zone. Under Section 305 of the Federal Act, up to four years of grants are available to 34 coastal States (the Great Lakes are included) to finance up to 80 percent of program development costs. The entire process is a collaborative one in which both State and Federal interests are accommodated.

After developing a management program the State may submit it to the Assistant Administrator for Coastal Zone Management for approval. If the Program is approved, the State is then eligible for annual grants under Section 306 to administer its management program.

In considering a segment of a program for Federal approval, the Assistant Administrator reviews it in accordance with the following general requirements:

1) That the Management Program is comprehensive. The CZMA emphasizes that important ecological, cultural, historic and aesthetic values are being lost or adversely affected by population growth and economic development in the coastal zone.

2) That the policies, standards, objectives and criteria upon which decisions pursuant to the program will be based are articulated clearly and are sufficiently specific to provide (a) a clear understanding

of the content of the program, especially in identifying who will be affected by the program and how, and (b) a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the Management Program; and

3) That there are sufficient policies of an enforceable nature to insure the implementation of and adherence to the Management Program. OCZM has issued regulations providing additional guidance on State program development and approval pursuant to the CZMA requirements. (15 CFR Part 923,43 F. Reg. 8378 et seq., March 1, 1978). These regulations, which reflect the CZMA's Federal-State collaborative process and the need to respond to unique State coastal needs, form the basis of my decision to approve the Program.

4) If a State intends to adopt its Management Program as a segment, it shall so advise the Assistant Administrator as early as practicable, stating the reasons for segmenting the program and requesting the Assistant Administrator's approval. In addition to meeting the approval requirements of these regulations, each segment of a Management Program must demonstrate that:

a) The segment includes a geographic area on both sides of the coastal landwater interface;

b) A timetable and budget have been established for the timely completion of the remaining segment(s); and

c) The State will exercise policy control over each segment of its management program prior to and following its integration into a complete State Management Program. Demonstration of this control will include (i) completion of the management boundary determination for the entire coastal zone throughout the State and (ii) consideration of the national interest throughout the State's entire coastal zone in the planning for and siting of facilities.

V. What the New Jersey Program Will Achieve

Program approval will provide funds to allow the State to:

a) Increase the permit review staff for the Riparian Statutes, Wetlands and Coastal Area Facility Review Programs by eight new positions,

b) Add specificity and predictability to the above permitting programs through administration of the new "Coastal Resources Development Policy" Regulations adopted September 28, 1978, as a result of this program,

c) Increase the enforcement staff for the Riparian, Wetlands and CAFRA programs,

d) Provide technical assistance to the Water programs, Green Acres Program and Air Programs within DEP through increases to the NJ/CZM staff,

e) Prepare ecological-sensitivity maps required for administration of the "Coastal Resource and Development Policy" Regulations,

f) Develop Dune Protection legislation and recommendations to the legislature within the first year of Program approval,

g) Assure consistency with the Program of all Federal and State actions in the coastal zone, through review of Federal permits and licenses and State actions that affect the coastal zone,

h) Increase NJ/CZM staff to work with N.J. Department of Energy on OCS activities, and develop more specific energy facility siting criteria,

i) Support and promote beach access to beaches and other water areas and continue the Beach Shuttle service to Island Beach State Park, and

j) Fully consider the national interest in the use of the coastal zone.

VI. Major Issues and Resolutions

The process of program development, which often involves the reconciliation of conflicting interests in the coastal zone, inevitably results in controversy. The segment is the product of numerous choices made during the four years of development. Those interested in the segment have raised a number of concerns during the EIS process. These issues are:

1) Does the State have adequate legal authorities to meet the requirements of the Federal Coastal Zone Management Act?

2) How does New Jersey meet the requirements of Section 306(h) -- program segmentation?

3) How will the segment program manage the cumulative impacts of small projects not regulated under CAFRA?

4) Has the State adequately considered the national interest in planning for and siting facilities in the State's coastal zone?

5) Is the Memorandum of Understanding between the New Jersey DEP and the New Jersey DOE satisfactory for program approval and legally enforceable?

I have considered all comments and have concluded that these objections do not present a legitimate bar to approval.[1/] With respect to the five major issues:

1) The State does have adequate legal authorities to meet the requirements of the CZMA.

Issues Raised by Commentors - The program does not have adequate laws to meet the authorities' requirements of the CZMA; the program doesn't incorporate related State laws; and the policies and regulations have not been adopted by DEP.

1/ All comments received on the DEIS are summarized and responded to in Appendix M of the FEIS.

Comments - New Jersey Petroleum Council, U.S. Department of Energy, Environmental Protection Agency, Public Service Electric and Gas Co., Jersey Central Power and Light Co., New Jersey Builders Association.

Response

The New Jersey Bay and Ocean Shore Segment has been submitted as a direct State control program (Section 306(E)(1)(B)) to meet the requirements of the CZMA. This particular section of the Act allows a State to develop a program based on a "single, comprehensive piece of legislation specific to coastal management and the requirements of this Act, or on the basis of several different, often pre-existing State authorities which are compatible with and applied on the basis of the coastal management policies." (923.42(d)(1))

In addition to the CAFRA law, all relevant laws have been incorporated into the Segment. The policies of the program have been promulgated as regulations for the Coastal Area Facility Review Act, Wetlands Act, Waterfront Development Permit Program and the Financial Assistance Shore Protection Program, thus assuring that these programs will be operating consistently with the program. In addition, the policies

applicable to the Spill Control and Compensation Act and the Soil Erosion and Sediment Control Act as well as to the Federal Clean Air Act and Federal Water Pollution Control Act have been drawn directly from those acts or their existing regulations or are incorporated by reference, thus assuring consistency with the program. Other DEP programs such as the Stream Encroachment Act, Flood Hazard Areas Act, Waterway Maintenance Program and the Green Acres Program will be consistent with the Program by being subject to receiving permits from the CAFRA, Wetlands and riparian programs and/or by virtue of the commitment in the Commissioner's letter on page ii of the FEIS which states that each agency within DEP will act consistently with the policies of the Bay and Ocean Shore Segment as outlined in Chapter Four. Specifically, Section 1.3 of the adopted rules (Chapter Four) states that the policies of the program will apply, to the extent statutorily permissible, to all coastal management and planning actions of DEP. Also, Chapter Five has outlined a conflict resolution process for resolving conflicts within DEP on actions affecting the coastal zone.

Although the FEIS contained the rules in revised draft form, they were adopted September 28, 1978, prior to program approval.

2) The Segment meets the requirements of Section 306(h) — program segmentation.

Issues Raised by Commentors - The State has not established a boundary for the entire State and has not adequately considered the national interest throughout the entire coastal zone.

Comments - Public Service Electric and Gas Co., Jersey Central Power and Light Co., New Jersey Natural Gas Co., New Jersey Petroleum Council.

Response

The State has proposed a management boundary for the entire State (see Chapter Two and Appendix E) based on the following areas:

a) Bay and Ocean Shore Segment

The landward and seaward boundary as defined in Chapter Two of the FEIS.

b) Hackensack Meadowlands

The area defined by the jurisdiction of the Hackensack Meadowlands Development Commission.

c) Delaware River Waterfront from the Delaware Memorial Bridge to Trenton

The area from the water's edge inland to the first road or cultural feature.

d) Northern Waterfront from Raritan Bay to the New York Border

The area from the water's edge inland to the first road or cultural feature.

The Hackensack Meadowlands, Delaware River, and Northern waterfront areas will be combined with the Bay and Ocean Shore to form the entire State program in 1979. The State has established a timetable and budget for completing the remainder of the State program to meet the requirements of 923.61(a)(2), (See Chapter Eight).

There seems to be confusion by some of the commentors over the requirements of 15 CFR 923.61(a)(3) of the Federal Regulations. This section recognizes that, before a program segment can be approved, it must meet approval requirements in the Coastal Zone Management Act and implementing regulations, just as a total program must. It also provides that the State must demonstrate that it will exercise policy control over each segment of its management program prior to and

following its integration into a complete State management program. This requirement refers to control to be exercised in the future, after adoption and approval of such additional segments. If total policy control were in effect at the present time, the whole purpose of segmented approval would be obviated. In Section 923.61(2)(3), two elements are specified which, at a minimum, must be considered by states at the time of segment approval: (a) boundary determination and (b) national interests in major facilities. Although such elements for future segments need not be in effect or in operation at the time of approval of an earlier segment, the State must include at such earlier time a general description of its consideration of at least these two elements.

New Jersey has completed the management boundary for the Bay and Ocean Shore Segment and has proposed a management boundary for the remainder of the State's coastal zone. The State does not need to identify the authorities upon which it will rely in this area at this time.

New Jersey has also met the requirements defined in Section 923.61 (a)(3) of the Federal Regulations for consideration of the national interests in a coastal zone segment. The State considered the national interests throughout the entire coastal zone in preparing the program

for the Segment. Such consideration is demonstrated by the policies in Chapter Four, and is described specifically in Chapter Six. In addition, New Jersey will continue to consider the national interests in its preparation of a program for the rest of the coastal zone.

3) The Segment need not manage all the cumulative impacts of small projects not regulated under CAFRA.

Issues Raised by Commentors - The program doesn't address the cumulative impacts of projects not covered by CAFRA (under 25 units).

Comments - Cape May County Planning Board, New Jersey Conservation Foundation, Sierra Club, New Jersey Office of Fiscal Affairs, New Jersey Builders Association, Monmouth County Planning Board, Natural Resources Defense Council, Environmental Protection Agency.

Response:

In 1973, the New Jersey Legislature established the threshold for coastal development permits under CAFRA at 25 or more dwelling units for new housing developments. DEP adopted

Procedural Rules and Regulations under CAFRA at 25 or more dwelling units for new housing developments. In April, 1977, DEP adopted Procedural Rules and Regulations under CAFRA which defined the threshold limit for DEP review under CAFRA parking facilities at 300 or more parking spaces for motor vehicles. (N.J. A.C. 7:7D-2.2) This definition of parking facilities is presently under litigation (New Jersey Builders Association vs. DEP) and any changes to this administrative rule will require a revision to this program reflecting such changes.

The interim final Federal Regulations (15 CFR 923) promulgated pursuant to the CZMA do not require that a State address the cumulative impact of a series of small scale developments. The regulations speak instead in terms of issues of concern to the State in its effort to protect and manage coastal resources. Given the developed nature of much of the shoreline of this proposed segment, I believe that the provision of New Jersey law to review all proposed development in wetlands and riparian lands and to limit review to major projects elsewhere in the Segment is consistent with a reasonable interpretation of program approval requirements.

This is not to say that the New Jersey program does not consider and, to a large extent, manage cumulative impacts from a number of sources. First, the Resource Policy on Secondary Impacts (Section 5.14 of Chapter Four) insures that each decision subject to the Coastal Program will consider the potential impact on future development. Furthermore, the Coastal Location Acceptability Method is designed so that each decision will be influenced by existing development in the area.

Second, the small developments not directly regulated by the Coastal program are indirectly affected by program decisions. The funding and siting of infrastructure, such as sewers, roads, and shore protection structures, has a major impact on future development. Similarly, the setting of air and water quality standards by DEP influences the pattern of development.

4) The State has adequately considered the national interest.

Issues Raised by Commentors - The program has not adequately considered the national interest because 1) it gives a preference for oil-fired electric power plants over nuclear and coal-fired plants in the segment, 2) and the process for considering the national interest is not adequately described.

Comments: Public Service Electric and Gas Co., Jersey Central Power and Light Co., New Jersey Natural Gas Co., New Jersey Petroleum Council.

Response:

Some comments concerned the program's adequacy in considering the national interest in energy facility siting as required by Section 306(c)(8) of the CZMA. The comments suggest that the program's preference for oil-fired generation over nuclear and coal-fired generation clearly conflicts with the national goal to encourage nuclear and coal-fired generation to reduce use of oil for generation of electric power. The comments criticized the program's failure to adequately consider the national interest in the orderly exploration, development, and transmission of domestic oil and natural gas and importation of LNG. Because of a description in the FEIS one comment expressed concern that all power plants might be excluded from the segment.

The coastal program as revised in the Program/FEIS does not express a preference for oil, nautural gas or any other type of electric generation, nor does it exclude LNG or power plants including nuclear facilities. The program requires that facilities comply with applicable State and Federal regulations, that if a

facility requires any one of these permits, the process for consideration of the national interest shall be Chapter Four of the Bay and Ocean Shore Management Program. If a permit application for an energy facility is submitted, DEP will forward copies of the applications to DOE which shall submit an energy report for consideration by DEP during its review process. The report shall describe national interests, if any, in the facility. DEP's decision must explain any differences with the report and, if necessary, an Energy Facility Review Board can be convened to resolve such differences. I believe this process is sufficient to meet the requirements for consideration of the national interest under Section 306(c)(8) and the requirements for segmentation under 923.61(3)(ii). Further, under CAFRA, DEP shall issue a permit only if it finds the proposed facility is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare. The clause "public welfare" has been defined in Section 1.1 of Chapter Four, which has been adopted as Administrative Rule, to include a full consideration of national interests.

5) The MOU between the New Jersey DOE and the New Jersey DEP is satisfactory and enforceable.

Issues Raised by Commentors - The MOU between the New Jersey DOE and New Jersey DEP is unclear on how the process will be carried out by both agencies; it is unclear if the procedural regulations of the Energy Facility Review Board will be adopted prior to program approval.

Comments: Public Service Electric and Gas Co., New Jersey Public Advocate, New Jersey Petroleum Council, Environmental Protection Agency.

Response:

Section 305(b)(6) of the Federal CZMA requires a State's Management Program to include a description of the organizational structure proposed to implement the program. Comment (c) to 15 CFR 923.45 (organizational structure) says "The main purpose of this requirement is to provide a closer understanding of the entities that have responsibility for administering various aspects of the management program and the interrelationship of these entities." I believe that the memorandum of understanding in Appendix G accomplishes this.

The memorandum outlines the decision making process to be followed and the policies on which such decisions will be based. Because both agencies are involved, it insures that all the various interests and needs addressed by the Federal Act will be considered in any decision. In short, it clearly outlines the interrelationship of the two agencies.

The procedure outlined by the memorandum has as its end product a CAFRA, Wetlands, or riparian permit decision, which not only makes the decision accountable to the coastal management policies, but also subject to appeal by affected persons.

Should a decision be referred by N.J. DOE to the Energy Facility Review Board, and keeping in mind that N.J. DOE has committed itself to the coastal management policies as well as the Energy Master Plan as the basis for its report, it then becomes a matter of resolving the different interpretations of the coastal policies by the N.J. DEP and the N.J. DOE. Such a procedure is recognized as valid in the Federal Regulations, 15 CFR 923.42 (control techniques). The revised memorandum reflects this in Section F.3.

Procedural regulations governing the Energy Facility Review Board will be adopted during the first year of Coastal

Program implementation (see revised Memorandum of Understanding, Appendix G. Because there are no current, active proposals for energy facilities in New Jersey, I do not believe that the short-term absence of such regulations will in any way delay or otherwise affect energy facility siting in New Jersey.

VII. Detailed Findings on the New Jersey Program

Having compared the basic structure of the Program with the general requirements of the Program, I now turn to the question of how the Program satisfies the specific requirements of the Act and regulations.

These findings follow the organizational scheme of the Federal Regulations (15 CFR Part 923). They begin by reviewing the uses subject to the Program (Subpart B) and the special management areas involved (Subpart C); next describe the general area that encompasses the uses and special areas, i.e., the boundary (Subpart D); then turn to the authorities and organization necessary for management (Subpart E); and finally examine the public process by which the Program was developed (Subpart F).

Section 1 - Uses Subject to Management (15 CFR Part 923, Subpart B)

(A) The Management Program includes "a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters." (Section 305(b)(2); 15 CFR (923.10-923.12.)

Any use involving construction on or alteration of riparian lands and any use* occurring in a coastal wetland are subject to the Management Program. For the remainder of the coastal area, all facilities defined under CAFRA require a permit. I find the definition of uses provided by these three State regulatory programs includes all uses which have direct and significant impact on the coastal water. The uses subject to CAFRA are listed in Section 13:19-3 of the Act and on pages 289-290 of the program.

Chapter Four, Section 4.0, presents a set of policies for particular uses of coastal resources. It should be noted that proposed development must meet the standards of the Location Policies and Resource Policies, in addition to the Use Policies, described below:

1) Housing: The Program prohibits housing development in the water's edge (4.2.2) (defined on page 83 of the Program/FEIS) and discourages residential development involving the destruction of existing structures, unless rehabilitation of the existing structures is impractical and infeasible (4.2.71). The Program encourages cluster housing development (4.2.3), housing that provides a mix of dwelling types for persons of different ages and incomes (4.2.4), and housing development that encourages public transportation (4.2.7).

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* Except mosquito control or certain agricultural practices.

Highrise housing developments are permitted subject to certain conditions designed to minimize the traffic and visual impact of such projects. (7.2.8)

2) Resort-Recreational: This type of use is given priority over all other uses in the region (4.3.1). Residential, individual, and hotel-motel developments encourage recreational uses (4.3.2), (4.3.4), and all private or public resort-recreation development adjacent to coastal waters must provide for public access to the shorefront (4.3.3). Casino development in Atlantic City is encouraged to locate in the city's traditional resort area (4.3.5). New amusement piers are prohibited, except in area under riparian grants, where they are discouraged (4.3.11).

3) Energy: Energy facilities are subject to joint review by N.J. DEP and the N.J. DOE. The Program encourages OCS exploration and development, "as long as all related onshore activities do not conflict with existing land uses and are conducted in an environmentally sound manner." (4.4.2). Discouraged activities include platform fabrication yards (4.4.6), and gas processing plants (4.7.14). Pipelines from the OCS and nuclear power plants are acceptable in

the Segment subject to certain conditions (4.4.7, 4.4.13). Energy conservation and alternative technologies are encouraged in the coastal zone (4.4.15).

4) Public Facilities: Proposals to construct new or expanded public facilities are acceptable provided the facility would serve a demonstrational need, and alternate technologies, including conservation, are impractical or infeasible (4.5.1). Detailed policies are also provided for public and private transportation facilities, waste disposal sites, and wastewater treatment systems.

5) Industry-Commerce: New or expanded coastal dependent industrial or commercial development is encouraged to locate at or adjacent to existing sites, except new sites may be acceptable provided that the development can demonstrate a high jobs/area ratio, and the development poses no conflict with resort-recreation uses of the coast. Mining is acceptable only in sites immediately adjacent to current mining operations (4.6.2), and major parking lots are acceptable subject to certain conditions.

6) Ports: Port-related development and marine commerce is acceptable only in or adjacent to established port areas.

7) Shore Protection: Structural measures are acceptable only under certain stringent conditions (4.8.5). Dune restoration and beach nourishment projects are encouraged (4.8.2).

(B) The policies and procedures defining the permissibility of uses are sufficiently comprehensive to address the national findings and policies of sections 302 and 303 of the CZMA. (Section 306(c)(1); 15 CFR 923.11, 923.12 and 923.3)

The policies for those uses subject to the program are admirably comprehensive in addressing the basic concerns and policies of the CZMA. Program policies are divided into Location Policies, Use Policies, and Resource Policies. These three sets of policies constitute a comprehensive, three-stage screening process for the review of proposed coastal activities.

There are over 100 enforceable, specific policies in the program which deal with such issues ranging from protection of coastal waters, ecological, to historic and aesthetic standards for developments requiring a permit under the program.

(C) The Program provides for a "method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." (Section 306(e)(2); 15 CFR 923.13, 923.43.)

In New Jersey, uses of regional benefit include energy generating and distribution facilities operated by public utilities (not refineries and tank farms), water and sewer facilities, solid waste collection and disposal systems, roads and highways, parks, housing for people with low or moderate incomes, facilities necessary for State or national defense, and the use of wetlands and wet beach areas.

Local governments are prevented from unreasonably excluding these uses by one or more of three factors. The most significant factor is the State's power to overrule a local decision denying approval to any public utility.

This State authority includes the power to supercede local zoning laws when necessary if the service conveniences the welfare of the public (N.J.S.A. 40:55D-19). The term public utility includes roads, street railway, traction railway, autobus, canal, express subway, pipeline, gas, electric light,

heat power, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraphic system, or plant or equipment for public use (N.J.S.A. 48:2-13).

Second, the State of New Jersey has the power of eminent domain for any facilities necessary for State or national defense (N.J.S.A. 20:1-3.1), airports (N.J.S.A. 20:1-3.1), State highways (N.J.S.A. 27:7-44.6), parks and open space under the Green Acres Program (N.J.S.A. 13:8A-24).

The New Jersey Supreme Court has established in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) that municipalities must "presumptively make realistically possible an appropriate variety and choice of housing. . .at least to the extent of the municipality's fair share of the present and prospective regional need. . ." The Department of Community Affairs is developing guidelines to implement this ruling.

(D) The Management Program does not include "a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities." (Section 305(b)(8); 15 CFR 923.14)

New Jersey will meet this requirement as part of its final submission which integrates this segment with the remainder of the State's coastal program as provided under 923.61(e).

Section II - Special Management Areas (15 CFR Part 923, Subpart (c))

(A) The management program includes an inventory and designation of areas of particular concern within the coastal zone (Sec. 305(b)(3); 15 CFR 923.21)

This segment proposes two generic geographical areas of particular concern and nine specific geographic areas of particular concern. These include all coastal wetlands, all wet sand beaches, Higbee Beach in Tower Township in Cape May County, Cape May Point Natural Area, Cape May Wetlands Natural Area, Strathmere Natural Area, North Brigantine Natural Area, Great Bay Natural Area, Island Beach State Park and Swan Point Natural Area.

These GAPC's were designated on the basis of the regional or State-wide significance of the area and the need for special attention based on the threat to the preservation of the area or obstacles to its development. An inventory has been completed for each of the designated GAPC's.

(B) The management program includes "broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority." (Section 305(b)(5); 15 CFR 923.22)

The State has established broad guidelines regarding priorities of uses throughout all geographic areas of particular concern. These priorities include:

1) Coastal Wetlands. The priority of uses in coastal wetlands is as follows:

a) Open space (no development or disturbance).

b) Development which (1) requires water access or is water-oriented as a central purpose of the basic function of the activity; (2) has no prudent or feasible alternative on a non-wetland site; (3) will result in minimum feasible alteration or impairment of natural tidal circulation;

and (4) will result in minimum feasible alteration or impairment of the natural contour of the natural vegetation of the wetlands.

c) Other development has lowest priority.

2) Wet Sand Beaches. The priority of uses in the wet sand beach areas is:

a) Recreation.

b) Navigation and commerce.

c) Development with no prudent or feasible location on a non-beach (wet sand) location.

d) All other uses have lowest priority.

3) Higbee Beach

The set of uses with priority in the Higbee Beach-Pond Creek Area includes only recreation compatible with protection of the area's wildlife. All other uses have lowest priority.

For the following areas: Cape May Point Natural Area (Class II), Cape May Wetlands Natural Area (Class III), Strathmere Natural Area (Class III), North Brigantine Natural Area (Class II), Great Bay Natural Area (Class I), Swan Point Natural Area (Class II), Manahawkin Natural Area (Class III), the Natural Areas System Regulations establish a priority of uses for each category of natural areas. These include:

Class I Natural Areas: a) The Department shall manage such areas for ecological research and study. When compatible with other uses they may be used for guided nature tours; and b) all of Class I natural areas shall be restricted to entry by permit or with a designated Department employee.

Class II Natural Areas: a) The Department shall manage Class I areas for the specific purpose of interpretation of natural processes, flora and fauna of this State. Class II areas may be used for ecological research and study; and b) use of Class II areas shall be limited to interpretive purposes or shall be restricted to entry by permit for research purposes.

Class III Natural Areas: a) The Department shall manage class III areas for recreational use, interpretive study, wildlife propagation, and succession control; and b) Use of Class III shall be limited to interpretative purposes, swimming, canoeing, rowboating,

hiking, trailside camping, and recreational hunting, fishing and trapping as provided in the natural areas system rules and regulations.

For Island Beach State Park, special priority of uses include:

a) Island Beach Research Area and Wildlife Sanctuary: An area of 1,200 acres encompassing the width of Island Beach State Park and running north for 3.3 miles. It demonstrates a sand dune habitat, it is a wildlife sanctuary, and will serve as a research area. Beach area type III, remainder type II.

b) Island Beach Natural Area: An area of 1,000 acres of the State park, encompassing its width and running 3.3. miles south (excepting maintenance area and official residence), it demonstrates dune habitat and is a botanical preserve. Beach area type III, remainder type II.

C) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values. (Section 306(c)(9), 15 CFR 923.23,923.24)

The program identifies several existing programs which provide DEP with the authority to designate areas for preservation or restoration.

The principal means is through the State Green Acres Program. DEP can purchase land or provide local grants for land purchase for park development. Under the Natural Areas System Act, DEP must identify natural areas within DEP-owned and managed lands in need of preservation or protection. The State Wild and Scenic Rivers System Act requires that DEP classify, designate, and administer river areas as wild, scenic, recreational or developed recreational rivers. In addition, the state can apply for funds to purchase wildlife habitat areas under the Endangered Species Act, or may designate areas for preservation or restoration through the New Jersey Register of Historic Places and the National Register of Historic Places.

D) The management program does not include a "definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value." (Section 305(b)(7); 15 CFR 923.25)

New Jersey will meet this requirement as part of its final submission which integrates this segment with the remainder of the State's coastal program as provided under 923.61(e).

(E) The management program does not include "a planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control or lessen the impact of such erosion, and to restore areas adversely affected by such erosion." (Section 305(b)(9); 15 CFR 923.26)

New Jersey will meet this requirement as part of its final submission which integrates this segment with the remainder of the State's coastal program as provided under 923.61(e).

Section III - Boundaries (15 CFR 923, Subpart D)

(A) The management program includes "an identification of the boundaries of the coastal zone subject to the management program." (Section 305(b)(1); 15 CFR 923.30-923.34).

The inland boundary of the Coastal Area of the segment is defined as the jurisdiction of the Coastal Area Facility Review Act, or the Upper Wetlands Boundary of coastal wetlands located landward of the CAFRA boundary. (See page 14 of Program/FEIS). The boundary of this segment therefore, runs from Raritan Bay south to Cape May, then along Delaware Bay to the Delaware Memorial Bridge and inland up to 24 miles. The seaward boundary extends to the limits of the U.S. territorial waters. The boundary excludes all land the use

of which is by law subject solely to the discretion of or which is in trust by the Federal Government, its officers or agents in accordance with 15 CFR 923.33.

Section IV - Authorities and Organization (15 CFR, Part 923, Subpart E)

(A) The State is organized to implement the Program and has the authorities necessary to do so (Sections 305(b)(4, 305(b)(6), 306(c)(6), 306(c)(7), 306(d), 306(e)(1); 15 CFR 923.40-42)

The Department of Environmental Protection is the lead agency and, within it, the Division of Marine Services is principally responsible for implementing the New Jersey Coastal Program, and for continuing coastal planning. Energy siting decisions will be made jointly by N.J. DEP and the Department of Energy consistent with the coastal policies as outlined in the MOU between New Jersey DOE and New Jersey DEP.

The Department of Environmental Protection was delegated broad authority to "formulate comprehensive policies for the conservation of the natural resources of the State" in 1970. In addition, the Governor specifically designated DEP as New Jersey's coastal planning agency under the Coastal Zone Management Act. The

Department's Division of Marine Services administers the major regulatory programs that will be relied on to implement the Program, including permitting under the Coastal Area Facility Review Act (CAFRA), the Wetlands Act, and the riparian statutes as described in Chapter V of the Program.

The Location, Use and Resources Policies of the Program have been adopted as regulations under these laws in accordance with the State's Administrative Procedure Act. I have found no indication that these regulations are anything but a valid exercise of the State's regulatory authority under these laws and legally binding on the administering agencies.

Under the new Department of Energy Act, N.J. DOE and N.J. DEP have "coextensive jurisdiction" with respect to the siting of energy facilities. The review procedures are described in the Memorandum of Understanding between the two departments set forth in Appendix G and include consideration of the N.J. DOE Energy Report by N.J. DEP and articulation by N.J. DEP of the reasons why its permit decision differs from the report. The Department of Energy may request that the Governor convene the Energy Facility Review Board in accordance with the Act. It is composed of the Director of N.J. DOE's Division of Energy Planning and Conservation, the

Commissioner of DEP and a third member appointed by the Governor. In such case, the Board will make the final decision on the energy facility permit application in accordance with its regulations of September 28, 1978. Review is limited to the reasonableness of DEP's decision in light of the Energy Report and to comply with the State's Administrative Procedures Act.

Therefore, I find that the State is organized to implement the program, that the authorities are adequate to permit implementation and that the relevant agencies are required to act consistently with the Program.

B) The requirements of the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended, are incorporated in the Management Program as the water pollution control and air pollution control requirements applicable to the Program. (Section 307(f); 15 CFR 923.44)

The water and air quality standards established by the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and the Clean Air Act (42 U.S.C. 1857g, et seq.) are part of the Program and are administered by N.J. DEP. (See Page 172 of the Program/FEIS.)

(C) The Management Program and any changes thereto have been reviewed and approved by the Governor. The Governor has designated a single agency to administer the grant and implement the Program (Section 306(c)(4)(5); 15 CFR 923.46-923.47).

The Governor's letter of August 28, 1978, indicates he has reviewed the program, approved the program, and certified that the program contains the necessary authorities and organizational structure for implementation. The Department of Environmental Protection has been designated as the lead State agency.

Section V - Coordination, Public Involvement and National Interests (15 CFR Part 923, Subpart F)

(A) During the process of Program development, the State has provided the opportunity for full participation by relevant government agencies having interests and responsibilities affecting the coastal zone, all interest groups and the general public, and held public hearings on the Program (Section 306(c)(1), 306(c)(3); 15 CFR 923.50-923.55, 923.58).

During the process of Program development, the State provided relevant Federal and State agencies, county governments, local governments, port authorities and interested parties with the opportunity to participate fully as evidenced by the following:

- The N.J. Office of Coastal Zone Management has held five general meetings to discuss the evolving program with Federal agency representatives, and met with individual Federal representatives on numerous occasions. Agency comments on the Coastal Management Strategy were utilized in preparing the current program document.

- In 1977 DEP contracted with twelve coastal counties to provide assistance to N.J. OCZM in developing the energy facility siting element of the New Jersey Coastal Program. This relationship has been continued by passing through funds to most of the same coastal county planning boards to allow them to contribute their views to the Program.

- Since November, 1976, New Jersey OCZM held monthly meetings with an Environmental Advisory Group composed of leaders of statewide civil and environmental groups.

- The N.J. OCZM has conducted a variety of public meetings, for the purpose of receiving feedback on DEP planning reports. From 1975 to 1977, New Jersey OCZM staff attended public meetings in 38 municipalities in addition to holding public hearings in 59 municipalities on CAFRA permit applications. In addition, a newsletter, The Jersey Coast is distributed to interested citizens, agencies and interest groups.

- N.J. OCZM held a series of workshops on energy involving gas representatives from oil producing coastal states, as well as the oil and gas industry.

- The State distributed in September 1977 the Coastal Management Strategy for public review and comment. Based on comments on this document, a combined DEIS/program document was distributed for public review April 28, 1978. Public hearings on this document were held June 13, 14, and 15 in Bridgeton, Toms River and Trenton, New Jersey. Over 1100 written comments were received on the program/DEIS. Written and oral summaries of the comments and responses to these comments are outlined in Appendix M of the FEIS.

(B) The views of the Federal agencies principally affected by the Program have been adequately considered. (Section 306(c)(1), 307(b); 15 CFR 923.51)

Federal agencies were given an early opportunity to participate in the development of the Program. A description of the extensive participation by the Federal agencies is found in Appendix C of the FEIS, which indicates over 20 opportunities for each agency to exchange comments on the developing program. Comments on the DEIS were received from the following Federal Departments: Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, Transportation, as well as the Army Corps of Engineers, Environmental Protection Agency, Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. No Federal agency recommended against approval, although each suggested changes that should be made. The major issues raised by the Federal agencies focused on the liquified natural gas policies, the nuclear power plant policies, the cumulative impacts of the program, dredging policies, and opportunities for continuing Federal participation. These comments as well as the agencies' specific concerns and OCZM's responses to the comments are treated at some length in Appendix M of the FEIS.

I find that the changes in the Program in response to Federal agency comments on the program to be reasonable and adequate.

Federal agency comments on the FEIS and OCZM responses thereto are summarized in Attachment A to these findings.

(C) The Management Program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, the coastal zone) which are necessary to meet requirements which are other than local in nature. The State has the means to give consideration to any applicable interstate energy plan or program. (Section 306(c)(8); 15 CFR 923.52)

Chapter Six of the Program identifies the facilities in which there may be a national interest in siting in the coastal zone. Identified are the national interest in the benefits to be derived from the siting of national defense facilities, energy production and transmission, recreation facilities, and transportation and ports (pages 182-187); the national interests in air and water quality (pages 187-188); the national interests in wetland protection and preserving endangered flora and fauna, wildlife refuges and reserves and living marine resources (pages 188-189), and the national interest in protecting floodplain and erosion hazard areas, barrier islands, historic sites and districts and areas of unique cultural significance, minerals, prime agricultural lands and forests (pages 190-191). This identification was made by consulting Federal

laws and regulations, policy statements of Executive Orders, special reports, studies and comments of Federal and State agencies and public testimony and applicable interstate energy plans.

All of the facilities identified above (national defense, energy production and transmission, recreation and transportation) are of sufficient size to require a CAFRA permit if they occur on non-Federally controlled land. Furthermore, these facilities and any other development which would significantly affect the eleven resources described below as in the national interest, (e.g., water, air, etc.) are required to receive a CAFRA permit. Although other State permits would be needed in some resource areas, i.e., wetlands, the CAFRA permit and an annual review on the coastal resource and development policies would cover all these issues and thus has been identified as the process during implementation of the Coastal Management Program - Bay and Ocean Shore Segment for assuring the continued consideration of identified national interests.

With respect to nuclear electric generating stations, the State recognizes in its revised policy 4.4.13 its limited role in matters of radiological health and safety pursuant to the Atomic Energy Act of 1954, and the Energy Reorganization Act of 1974, as interpreted by court decisions establishing the respective jurisdictions of the

Federal Nuclear Regulatory Commission and the State (see inter alia Public Interest Research Group vs. State of New Jersey). As a further clarification for purposes of consistency determination under §307 of the Federal Act, the provision of policy 4.4.13(e) with regard to the storage and disposal of spent nuclear fuel shall apply only to the extent described above, and only to sites significantly affecting the State's coastal zone.

With respect to any Federal license or permit the State's review of the application for that license or permit, for Federal consistency purposes, will be limited to the scope of the review of that application as established under State and Federal law. For example, in the case of the renewal of an operating permit for a functioning nuclear power plant, the review under both New Jersey State law and for Federal consistency is limited first to the jurisdiction described in the above paragraph, and then to only issues such as operating practices and changed conditions. The review could not reopen an issue such as proper siting of the existing facility.

The CAFRA law states that the Commissioner of DEP "shall issue a permit only if he finds that the proposed facility. . .is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare." (N.J.S.A. 13:19-10f) The Commissioner has interpreted "public welfare" to include a full consideration of national interests as

described in the program. This interpretation is contained in Chapter Four, which has been adopted as regulations. In addition, the Department of Energy will interpret its mandate ". . .to contribute to the proper siting of energy facilities necessary to serve the public interest. . ." (N.J.S.A. 25:27f.2) as sufficient authority to consider the national interest in the siting of coastal energy facilities (see Section I of MOU between DEP and DOE, Appendix G, page 284).

(D) The State has "coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's Management Program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency." Section 306(c)(2); 15 CFR 923.56)

The Program was coordinated with local areawide and interstate plans by means of a variety of mechanisms existing on January 1, 1978, the year in which the Program was submitted.

The Department of Community Affairs has prepared a State Development Guide Plan pursuant to Section 701 of the Federal Housing and Community Development Act. The housing element of the policy document provided input for the Coastal Program's housing policies.

The administrative record contains a listing of coordination with local governments as of January 1, 1978.

N.J. OCZM consulted with the following regional and interstate agencies: the Mid-Atlantic Regional Fisheries Management Council, the Wilmington Metropolitan Area Planning Coordination Council, the Tri-State Regional Planning Commission, the Delaware Valley Regional Planning Commission, and the South Jersey Resource Conservation and Development Council.

(E) The State has established an effective mechanism for continuing consultation and coordination between the State and with local governments, interstate agencies, regional agencies and area-wide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of the CZMA. (Section 306(c)(2)(B); 15 CFR 923.57)

The Coastal Resource and Development Policies will provide the basis for N.J. OCZM consultation and coordination with local governments, regional and interstate agencies and agencies from other states with an interest in the coast.

The Department of Community Affairs will continue to participate in the review of CAFRA permit applications as will the Department of Labor and Industry.

Development proposed in the coastal zone will be subject to all applicable local regulations as well as to State standards on permits. A locally approved proposal cannot be constructed without receipt of relevant State-approved project permits and receive appropriate local approvals. CAFRA Procedural Rules and Regulations require that CAFRA permit applications be offered for review and comment by county and municipal planning boards and environmental commissions.

Contracts between the DEP and twelve coastal counties afford the counties the opportunity to comment on CAFRA, Wetland and riparian permit applications, and review the consistency of State, county and municipal plans. In the future, certain county and municipal plans may be adopted as specific elements of the State Coastal Program.

VIII. The State has developed and adopted a program segment which meets approval requirements for segmentation and adequately provides for the ultimate and expeditious coordination of the segments into a single unified program (Section 306(h) and 15 CFR 923.61).

The State has proposed a management boundary for the entire State (See Chapter Two of the Program/FEIS)/

The State is committed to unify the Bay and Ocean Shore Segment with the remainder of the State program in 1979. The State has established a timetable and budget for completing the remainder of the State program to meet the requirements of 923.61(a)(2). (See page 209 of Program/FEIS)

New Jersey has also met the requirements defined in Section 923.61(a)(3) of the Federal Regulations for consideration of the national interest in a coastal zone segment. The State considered the national interests throughout the entire coastal zone in preparing the program for the Segment. Such consideration is demonstrated by the policies in Chapter Four, and is described specifically in Chapter Six. In addition, New Jersey will continue to consider the national interests in its preparation of a program for the rest of the coastal zone.

IX. Conclusion

Having made the findings set forth above, and having determined that the Bay and Ocean Shore Segment of New Jersey Coastal Zone Management Program meets the requirements of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations, I have approved this Segment on behalf of the Secretary of Commerce, effective SEP 20 1978.

Robert W. Knecht

Robert W. Knecht
Assistant Administrator
for Coastal Zone Management

Appendix A

Federal Comments Received on the Program/FEIS

Several Federal comments were received on the Program/FEIS and are summarized with OCZM responses below:

The National Marine Fisheries Service (NMFS) suggested the "prudent and feasible alternative" standard for Policy 3.2.11.2(a) should be changed to a standard "that the project is in the public interest." This change in the program is unnecessary because the public interest standard is part of the State's Coastal Area Facility Review Act and thus would apply to any activity that may occur in areas covered by Policy 3.2.11.2(a).

The Department of Energy (DOE) found the revised program and impact statement substantially responsive to their comments on the DEIS and supports approval of the program. The DOE requests clarification of the intent of the N. J. Department of Energy and the N. J. Department of Environmental Protection to cooperate on the preparation of a Major Energy Facility Study. Both agencies will participate in this study which will be completed by the end of 1979. DOE would like a clarification of the phrase "prudent and feasible" that is used in Policy 4.4.13(a). DOE interprets this phrase to require only a finding that no alternative sites are identified as superior to the proposed site. This interpretation is incorrect. The "prudent and feasible" phrase includes a wider range of consideration beyond mere alternative site considerations, i.e., fuel source, design criteria, etc. DOE felt that the discussion on page 302 of the Program concerning the N. J. Department of Environmental Protection Commissioner's role in reviewing safety procedures of nuclear

power plant applications should be incorporated into Policy 4.4.13(e). The statement on page 302 of the program is a summary of the decision in Public Interest Research Group v. State of New Jersey 152 N. J. Super 191 which is referenced in Policy 4.4.13(e) and is part of the policy statement.

The Corps of Engineers supported approval of the program and raised no serious objection to the program.

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